LIBRARY
SUPREME COURT, U. S.
SEP 16 1974
MICHAEL RODAK, JR., CLK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1974

No. 74-282

HELEN FAYE GENERES, *Petitioner*

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SHASTA
CIBULA & CIBULA, et al., *Respondent*
and
THE PEOPLE OF THE STATE OF CALIFORNIA,
Real Party in Interest

PETITION FOR A WRIT OF CERTIORARI
to the California Court of Appeal
Third Appellate District

HELEN FAYE GENERES
2538 Waldon Street
Redding, California 96001
Telephone (916) 243-0586
Petitioner.

Subject Index

Opinion Below 1

Jurisdiction 2

Questions Presented 2

Constitutional and Statutory Provisions Involved 3

Statement of the Case 4

A. Procedural History 4

B. Facts 7

Reasons for Granting the Writ 9

It Violates Due Process and Equal Protection Guarantees for a Trial Judge to Himself Determine Whether He is Personally Embroiled When His Embroilment is in Issue: When There is some Rational and Reasonably Arguable Basis for the Claim That the Judge is Embroiled, Due Process requires that the Contempt Determination Be Made by Another Judge 9

It Violates First Amendment, Six Amendment, and Fourteenth Amendment Guarantees and Due Process and Equal Protection for A Court to Prohibit the Use of a Tape Recorder by All Litigants and All Counsels in All Courtrooms in All Cases 11

The Court of Appeal Failed to Make an Independent De Novo Examination of the Facts, as required by the Doctrine of Constitutional Fact, but also Failed to Grant Petitioner a Hearing on the Motion to Strike the Perjured Affidavits in Violation of Sixth Amendment Guarantees 12

Petitioner's Conviction for Criminal Contempt and the Subsequent Stigma on Her Name and Her Profession are Not Only of the Utmost Gravity for Her but Chill As Well the Exercise of First, Sixth, and Fourteenth Amendment Rights of All Litigants and All Attorneys in All Cases 16

Conclusion 16

Table of Authorities Cited

Cases

Burns v. People, 9 ALR 3d 478, 479, 490; 9 Ill 2d 477 (1956) 16
Groppi v. Leslie, 404 U.S. 496, 502 (1972) 10
Harriet Cotton Mills v. Local Union 578, 362 U.S. 941; 79 ALR 2d 647 (1959) 14
Holt v. Virginia, 381 U.S. 131 (1965) 14
In re Grossman, 73-787, 41 L. Ed. 2d—, 418 U.S.—(July 1974) 10, 16
In re Hagan, 224 C. A. 2d 590, 35 Cal. Rptr 828 (1964) 11
In re Little, 404 U.S. 553 (1972) 10
In re Oliver, 333 U.S. 257, 273 (1948) 10
Johnson vs. Mississippi, 403 U.S. 212 (1971) 10
Mayberry vs. Pennsylvania, 400 U.S. 455 (1971) 10
Mooney v. Holohan, 294 U.S. 103; 55 S. Ct. 340; 98 ALR 406, 407 (1935) 13
Napue v. Illinois, 360 U.S. 264, 269 (1959) 13, 14
Sacher v. United States, 343 U.S. 1 (1952) 10
Taylor v. Hayes, 41 L. Ed. 2d 897, —U.S.—, 73-473 Syllabus (6-26-1974) 10, 13
Thompson v. City of Louisville, 362 U.S. 199, 203-204 (1960) 16
Tumey v. Ohio, 273 U.S. 510, 532 (1927) 13
U.S. v. Dellinger et al, 461 F (2d) 389 (1972) 15
Ward v. City of Monroeville, 409 U.S. 57 (1972) 13

Codes

California Code of Civil Procedure Section 178 & 1211 3
California Penal Code Section 1205 & 1206 4

Constitutional Amendments

First Amendment to the U.S. Constitution 2, 3, 9, 11, 12, 15, 16
Fifth Amendment to the U.S. Constitution 2, 3, 9
Sixth Amendment to the U.S. Constitution 2, 3, 9, 11, 12, 15, 16
Eighth Amendment to the U.S. Constitution 2, 3, 15
Ninth Amendment to the U.S. Constitution 2, 3
Thirteenth Amendment to the U.S. Constitution 2, 3
Fourteenth Amendment to the U.S. Constitution 2, 3, 9, 11, 12, 13, 14, 15, 16
Fifteenth Amendment to the U.S. Constitution 2, 3

Statute

28 U.S. C. Section 1257 (3) 3

Texts

Oswald, Contempt of Court (3d Ed. 56-57) 10

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1974

No.

HELEN FAYE GENERES, *Petitioner*

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SHASTA
CIBULA & CIBULA, et al., *Respondent*

and

THE PEOPLE OF THE STATE OF CALIFORNIA,
Real Party in Interest

PETITION FOR A WRIT OF CERTIORARI
to the California Court of Appeal
Third Appellate District

The Petitioner, Helen Faye Generes, prays that a Writ of Certiorari to review the judgment of the Supreme Court of the State of California of July 10, 1974, after judgment of the Court of Appeal, Third Appellate District.

OPINIONS BELOW

The judgments of the Supreme Court and the Court of Appeal were without opinion and are attached as Appendix A and Appendix B-1, B-2, respectively. The Order Adjudging Contempt of the Superior Court is attached as Appendix D.

JURISDICTION

The Supreme Court of the State of California denied a Petition for Hearing, without opinion, on July 10, 1974. This Petition for Writ of Certiorari was filed less than 90 days from date aforesaid. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1257.3.

QUESTIONS PRESENTED

Petitioner, Helen Faye Generes, a lay person, was summarily convicted of contempt. The first two charges were made in her presence and the third charge was included in the order adjudging contempt, and fined $1,200.00.

1. Whether the trial judge impartially could sit in judgment against contempt defendant in this case.

2. Whether Sixth Amendment guarantees and effective assistance of counsel and Fourteenth Amendment guarantees of due process permit a finding of contempt against this litigent under the circumstances.

3. Whether Due Process and Equal Protection Clauses require that contemnor in summary contempt proceedings held at conclusion of hearing be given an opportunity to be heard on the facts under the law in defense or mitigation.

4. Whether this contempt conviction violates the First, Fourteenth, and chill exercise the First, Fourteenth, Fifth, Sixth, Eighth, Ninth, Thirteenth, and Fifteenth Amendment rights of all attorneys in all cases.

5. Whether a fine of $1200.00 is a "serious contempt" which is two and one half times the maximum fine under state law and equivalent to eight months in jail under the state penal code violates the Eighth, and Fourteenth Amendments rights.

6. Whether it is not a very important constitutional right under

the First Amendment guarantees for a litigant and their counsels to use a tape recorder for a record of the proceedings; to check on the accuracy of a reporter's transcript, for economy, and for their immediate use.

7. Whether petitioner is forced to continue her trial in the civil action and face further contempt charges by this judge. Can petitioner have a fair trial before him.

Constitutional and Statutory Provisions Involved

This case involves the First, Fifth, Sixth, Seventh, Eighth, Ninth, Thirteenth, Fourteenth, and Fifteenth Amendments of the Constitution of the United States.

28 U.S.C. Section 1257:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had may be reviewed by the Supreme Court as follows: (3) By Writ of Certiorari . . .

Constitution of the United States, Amendment XIV:

> "... No State shall make or enforce any law which shall abridge the privileges of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

This case also involves the following statutes of the State of California:

California Code of Civil Procedure, Section 178:

> "A judicial officer may punish for contempt."

California Code of Civil Procedure, Section 1211:

> "When a contempt is committed in the immediate view and presence of the court, . . . it may be punished summarily; for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the

person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed."

California Penal Code 1205:

"Every such judgment must specify the extent of the imprisonment for non-payment of fine, which must be not more than one day for each $5.00 fine, nor exceed in any case the time for which the defendant might be sentenced to imprisonment for the offense of which he has been convicted."

California Penal Code 1206:

"A judgment that defendant pay a fine without the alternative of imprisonment constitutes a lien in like manner as a judgment for money rendered in a civil action."

STATEMENT OF THE CASE

A. Procedural History:

In August 1973 Petitioner Helen Faye Generes filed a complaint in Shasta County Superior Court identified by Action No. 47664. The motions in this action *Generes vs. Cibula* & *Cibula, et al.,* had all been heard in Courtroom one, Judge Eaton, presiding, until April 22, 1974, when without notice the motion was transferred to Courtroom III, Judge Small. Judge Small had just been appointed by the Governor, making a total of three superior court judges. Petitioner filed a written disqualification of Judge Small for bias and prejudice. The motion was transferred to Judge Abbe's Courtroom II. Petitioner filed a disqualification of Judge Abbe for Cause. Petitioner was informed that Judge Eaton in Courtroom I had been assigned the criminal calendar and could not hear the motion. Judge Eaton had been a judge over twenty years. Petitioner reluctantly withdrew her disqualification of Judge Small on condition he would be fair. *Petitioner at all times in Courtroom I had used her tape recorder for a record of the proceedings.* Defendants counsels had made no ob-

jection. However, on April 22, 1974, defendants counsel made a big issue and objected to the use of the tape recorder by petitioner. First, in Judge Abbe's Courtroom II, whereupon Judge Abbe ordered Petitioner to turn off her tape recorder and she did. He then raised the issue before Judge Small in Courtroom III when the motion came on for hearing. Judge Small made no ruling. Judge Small did object to petitioner's secretary sitting at the table to make notes and ordered her to sit in the spectators chairs. Defendants counsel argued for 25 minutes. The Court then announced another matter was scheduled in 5 minutes. Petitioner told the Court she could not respond in that short time. The Court interjected a couple of questions and allotted the balance of the time to defendants counsel The Court in its ruling misquoted petitioner jeopardizing her substantial rights. Petitioner requested Judge Small ex parte to correct the ruling. Judge Small was hostile, used "fighting words" shrugged his shoulders, flung his fists, and told petitioner to file a noticed motion. The motion was duly served and filed and supported by two declarations, one by Petitioner and one by her secretary.

> "Notice is hereby given that Helen Faye Generes will on May 6, 1974 in the Courtroom of Presiding Judge Small Dept. III will move the Court for an order correcting the minutes to read: "Ms. Generes states to the Court that Cibula & Cibula's *argument is* that as escrow agents, they do not have any duty to her."

The Court ruling had omitted *argument is* giving the opposite meaning.

See complete transcript of proceeding on motion May 6, 1974. Appendix C.

See the Order Adjudging Contempt. Appendix D. The order recites April 6, 1974. This is an error.

The Court did not charge petitioner with the third charge of contempt in the courtroom.

(1) The Court without any warning or the nature of the con-

tempt as a complete surprise "out of the blue sky" made the first charge of contempt and fined petitioner $500.00. Petitioner was given no opportunity to be heard in defense.

(2) The Court then made a second charge of contempt for petitioner having used a tape recorder. Petitioner stated she had a constitutional right to use her tape recorder. She had not been told she could not use the tape recorder in Judge Small's courtroom by Judge Small or anyone else. Still the Court fined her $200.00.

(3) Petitioner received in the mail the Order adjudging contempt and it included a third charge of contempt and a fine of $500.00.

Petitioner attempted to move the Superior Court for an opportunity to be heard by way of legal argument and on the facts and for a stay but was told this was not possible.

On May 17, 1974, Petitioner filed petitions for writs of certorari, madamus, and prohibition in the California Court of Appeal, Third Appellate District, seeking review of the Contempt Charges and Annulment of the $1200.00 fines. On May 24, 1974, the Court of Appeal for good cause treated the petitions as pettions for writs of habeas corpus and issued a stay order staying enforcement of the fines and granted respondent court an extension of time to file an answer in opposition by May 31, 1974. See Appendix B-2.

On June 3, 1974, Respondent Court filed their answer. Petitioner filed a motion to strike the untimely answer and the perjured affidavits in the Court's answer. Without any opportunity to be heard in defense, the Court of Appeal on June 20, 1974, denied, without opinion, the petitions and vacated the stay order on the $1200.00 fines. See Appendix B-1.

On July 1, 1974, petitioner filed her petition for hearing to review the order of the Court of Appeal in the Supreme Court and

requested a stay order on the fines. On July 10, 1974, the Supreme Court denied the petition for hearing.

Petitioner exhausted her remedies in the State Courts.

Petitioner requested a stay order which was served on This Court on July 11, 1974, upon the State Courts refusal to grant a stay pending petition for writ of certiorari to This Court. The petition for stay was denied by This Court on July 27, 1974.

Petitioner on July 18, 1974, paid the fines under protest. See Appendix E. The Shasta County Superior Court caused the check to be published as news in the Record-Searchlight.

B. Facts:

Petitioner is a licensed Real Estate Broker in the State of California and has been for the past eight years. She is well known in the area. She has been a widow for 26 years. On the death of her husband, she raised a son and a daughter and sent them through the universities. They graduated with honors. Petitioner past experience includes administrative and supervisory positions wth the U.S. Army, Department of the Interior, and the Veterans Administration. Petitioner was representing herself because she could not find an attorney who would take the case against defendants, who were attorneys. The action was for damages for a lost nine thousand dollar real estate commission and emotional distress and medical expenses as a result of defendants conduct. No funds had been allotted by the state or the county for the payment of Judge Small's salary at the time he charged petitioner with contempt and the $1200.00 fines.

Petitioner felt the prejudice, tension, and dislike of the judge when she disquilified him for bias and prejudice on April 22, 1974; his hostility during the hearing on April 22, 1974, when he prevented her from presenting argument; and again when she requested him ex parte to correct the misquote in the Court's ruling; again when she disqualified him for cause in action 45113

just a few minutes before the motion came on for hearing from which the contempt charges arose. She again felt his hostility during the proceedings to correct the minutes on May 6, 1974, when he made the contempt charges. Twice, during the five minute proceeding (see Appendix C) petitioner made assignments of errors. After she made the first assignment, the Court invited questions which the petitioner attempted to answer to the best of her ability without jeopardizing her rights in the lawsuit. The second assignment of error was at the close of the hearing when petitioner attempted to clarify the issue. The Court responded with the first accusaton of contempt and a fine of $500.00. (See Appendix C.)

After the hearing had been adjourned, the trial court made a second charge of contempt for petitioner having used a tape recorder. (3"x5"x1½".) This charge was based on *hearsay* in that The Court put in the order adjudging contempt that the Presiding Judge (Abbe) had ordered petitioner not to use a tape recorder in the courtrooms. This was a false statement. Judge Abbe had directed his order only to his courtroom. Petitioner stated she had a constitutional right to use the tape recorder when Judge Small charged her with contempt for using it. There are no court rules that require permission. Judge Small had not told petitioner she needed permission. The Third Charge of contempt was made after petitoner left the courtroom in the order adjudging contempt based on *hearsay*.

Petitioner was given no warning of any contempt charges. She was given no opportunity to be heard in defense in the trial court. She had not been told she could not use a tape recorder for a record of the proceedings. The Court objected to her secretary sitting at the table so she could take notes. Petitioner did not know about the third charge of contempt until she read it in the newspaper.

Petitioner filed a motion for a writ of certiorari in the Court of Appeal to review the contempt charges and annul the $1200.00 fines on the grounds that she had been denied due process under the Fourteenth Amendment to the Constitution. That she had been denied her constitutional rights under the First, Fifth, and Sixth Amendments of the United States Constitution. Petitioner filed a motion to strike the untimely answer and the perjured affidavits[1] that were used knowingly and intentionally in Respondent Court's answer. The motion was supported by a declaration attacking the integrity of the attorneys who signed the affidavits. Yet, her petition was denied without any hearing. Petition attempted to answer the affidavits in a petition for hearing in the Supreme Court but it too was denied.

REASONS FOR GRANTING THE WRIT

It Violates Due Process and Equal Protection Guarantees for a Trial Judge to Himself Determine Whether He is Personally Embroiled When His Embroilment Is in Issue: When There is Some Rational and Reasonably Arguable Basis for the Claim That the Judge is Embroiled, Due Process requires That the Contempt Determination Be Made by Another Judge.

Petitioner contends that the trial judge was in fact, as a matter of law, here embroiled and enmeshed with her, within the mean-

---

[1]Specific instances of perjury were in the affidavits of Attorneys Stephen C. Birdlebough, Ralph E. McCarthy, Henry Saunders and Roger H. Cowling and was material. To cite a few: Birdlebough's affidavit claims the Court warned petitioner prior to charging her with contempt. All the affidavits state Judge Small asked petitioner if she was using the tape recorder without permission. Judge Small did not warn petitioner and he did not ask her if she was using the tape recorder without permission. The affidavits state Judge Small showed no irritation and exercised restraint when he was visibly agitated and embroiled caused by his anger toward petitioner. The word "phony" is not a slanderous word. The remarks accredited by the declarations to having been made by petitioner are hearsay and false.

ing of *Mayberry v. Pennsylvania* 400 U.S. 455 (1971), and *Johnson v. Mississippi*, 403 U. S. 212 (1971), *Taylor vs. Hayes*, Syllabus 74-473,—U.S.—41 L. Ed. 2d 897, 94 S. Ct.—(June 26, 1974), and *In Re Grossman* 73-787, 41 L. Ed. 2d—, 418 U.S.—(July, 1974), thus requiring the contempt to be heard by another judge, it is indisputable that there is some rational basis and it is reasonable arguable that this trial judge was so embroiled.

Petitioner, a lay person, was given no warning, no notice of the specific charges, and no opportunity to be heard in defense. She was not advised of her right to counsel. In *Re Little* 404 U.S. 553 (1972), This Court said: "Whether statements in court constitute criminal contempt, an accused who is acting as his own counsel is entitled to as much latitude in conducting his defense as is enjoyed by counsel." In the case at bar, the judge just would not permit plaintiff-petitioner to present her argument. The trial judge interjected questions, that petitioner attempted to answer without jeopardizing her rights to her lawsuit, and because he didn't like the method she used in presenting her case, he charged her with contempt. In *Oswald*, Contempt of Court (3d Ed. pp 56-57) see *People v. Rongetti*, 344 Ill. 107. "An advocate is at liberty, when addressing the Court in regular course, to combat and contest strongly any adverse views of the Judge . . ."

This Court said this year (1974) in *Taylor vs. Hayes*, 73-743 supra. citing *Sacher v. United States*, 343 U.S. 1 (1952) at 8, that "summary punishment always, and rightly, is regarded with disfavor . . . We have stated time and again that reasonable notice of a charge and opportunity to be heard in defense before punishment is imposed are basic in our system of jurisprudence." *Groppi v. Leslie*, 404 U.S. 496, 502 (1972) quoting from in *Re Oliver*, 333 U.S. 257, 273 (1948).

It Violates First Amendment, Sixth Amendment, and Fourteenth Amendment Guarantees and Due Process and Equal Protection for A Court to Prohibit The Use of a Tape Recorder by All Litigants and All Counsels in All Cases.

In Re Hagan, 224 C. A. 2d 590, 35 Cal. Rptr. 828 (1964) the court said: "Operation of a noiseless and concealed recording device in room during conduct of a proceeding to modify a pretrial conference order so as to make a record in aid of the litigant's memory did not constitute contempt. Contempt is a drastic remedy to be employed only when necessary for the proper and orderly conduct of judicial proceedings."

Mr. Hagan had been charged with contempt and sentenced to five days in jail. In the instant case, petitioner's recorder was in full view of the Court.

The case at bar represents an ideal set of facts for the United States Supreme Court to rule on this very important constitutional right for the benefit of all litigants, the bar, the judiciary and the public as a whole.

(1) The judge had just been appointed to the bench. For many years he specialized as a defense counsel for several of the largest insurance companies.

(2) Defendants malpractice insurance counsels made a big issue about the petitioner using her tape recorder on April 22, 1974, before the new judge.

(3) The Court misquoted the plaintiff jeopardizing her substantial rights in the lawsuit.

(4) Everyone cannot afford a court reporter. In addition, Court Reporters make errors. We live in a complex computerized world that no reporter could possibly be familiar with the terminology that the professions and trades present. The tape recording of the proceedings could be used to check on the accuracy of a re-

porter's transcript, besides the material is readily available for immediate use and more economical.

(5) The public will have faith and respect in the judicial system only if the courtrooms are inviolate of corruption. A silent and noiseless tape recorder is a necessity. This is not an issue that should be swept under the rug in today's world. The Supreme Court should hear the case and rule that every litigant and their counsels have First, Sixth, and Fourteenth Amendment Right Guarantees under due process of the Constitution of the United States to use a tape recorder for their records in the Courtroom.

The Court of Appeal Failed to Make an Independent De Novo Examination of the Facts, as Required by the Doctrine of Constitutional Fact, but also Failed to Grant Petitioner a Hearing on the Motion to Strike the Perjured Affidavits in Violation of Sixth Amendment Guarantees.

It is a denial of equal protection to have a right as important as that of a hearing before an impartial judge rest upon such subtle distinctions, upon which reasonable persons might well differ and do differ. Can the language of the alleged contemnor in respectful language that the judge regards as contumacious be so threatening to the orderly process of justice that it disrupts the proceedings, thus constituting the contempt in cases as the present one where the language is not contemptuous per se and the tape recorder was noiseless and silent; while it is insufficiently provocative to enmesh and embroil the judge to cruel and unusual punishment of $1200.00 fine equivalent to eight months in jail, two and one half times the maximum under state law, and then to say a judge who refuses to let a lay person present her argument where she has lost a $9000.00 commission, and she made the sale and brought the buyers and sellers together, and for the judge

to say she is clogging the wheels of justice, that she does not have a case, and then to say the judge is not embroiled and can sit impartially in judgment. A rule which conditions a criminal contempt conviction on the specific finding that the utterances disrupted the court proceedings and yet to permit the conviction to be summarily visited upon a contemnor by the judge, on the same grounds that the utterances did not constitute enough vilification or insult to demonstrate embroilment denies both due process and equal protection under the Fourteenth Amendment.

And as This Court said in *Taylor vs. Hayes,* supra., "But contemptuous conduct though short of personal attack, may still provoke a trial judge and so embroil him in controversy that he cannot 'hold the balance, nice, clear and true between the State and the accused' . . ." *Tumey v. Ohio,* 273 U.S. 510, 532 (1927), In re Grossman, supra.

Could this trial judge hold the balance nice and true where he had just been appointed to the bench and no funds had been appropriated for his salary. See *Ward v. City of Monroeville,* 409 U.S. 57 (1972).

Defendants Cibula & Cibula's counsels received notice but they chose to not be present. Still the trial judge undertook it upon himself with questions to put on their defense, and when the petitioner did not jeopardze her rights, he proceeded with the power of contempt. (See Transcript of Proceedings—Appendix C.)

This Court said in *Napue v. Illinois,* 360 U.S. 264 at 269, (1959) at 272, "That a conviction obtained through the use of false evidence . . . must fall under the Fourteenth Amendment, citing *Mooney v. Holohan,* 98 ALR, 407, 294 U.S. 103(1935). In *Mooney v. Holohan* and citations at 407 (S)ince in all these instances, while there is a form of hearing, a hearing in substance, within the meaning of due process, is denied." and "The denial

by a state of any judicial process by which a conviction obtained through the admitted or proved use by the State, knowingly or unknowingly, of perjured testimony . . . is a deprivaton of liberty without due process of law in violation of the Fourteenth Amendment." Ths Court said in *Napue v. Illinois* supra at 269 "It is of no consequence that the falsehood bore upon the witness" credibility rather than directly upon defendant's guilt. *A lie is a lie,* no matter what its subject . . . for its impact was the same, preventing, a trial that could in any real sense be termed fair."

The Courts have held in criminal contempt proceedings that affidavits should not be used as evidence to establish contumacious conduct, since to do so would deny to the alleged contemnor *the right to confront and cross-examne witnesses. Harriet Cotton Mills vs. Local Union* 578 (1959) 79 ALR 2d 647; 362 U.S. 941. In *Holt vs. Virginia* 381 U.S. 131 (1965) the defendants attorneys had charged that their summary adjudication violated the due process of the Fourteenth Amendment. This is the case at bar. No matter how summary the hearing, no criminal convictions should be affirmed when the defendant was denied an opportunity to be heard in defense.

Trial before an impartial judge in contempt cases, as in other cases is, of course, essential to due process. But several other constitutional issues arise from contempt convictions, involving determination of fact, of mixed law and fact, and of law, all requiring a detached and impartial judge. In the instant case, the following issues are involved:

Whether the petitioner acted with specific intent requisite to criminal contempt.

Whether the utterances were contemptuous per se;

Whether the utterances interrupted the proceedings.

Whether or not the petitioners conduct was disobedient, disorderly, and contemptuous.

Whether the statements could, under any circumstances constitute contempt as a matter of law.

Whether First Amendment considerations protect the utterances.

Whether the $1200.00 fines are cruel and excessive in violation of Eighth Amendment Guarantees.

Whether the $1200.00 fine is a "serious offense" warranting a trial by jury.

Whether or not the denial of bail or jail for contempt charges is constitutional.

Whether under the circumstances the statements could under any of the circumstances constitute contempt as a matter of law.

Whether or not perjured affidavits knowingly or unknowingly intentionally used in the Respondent's Court answer violates the First and Sixth and Fourteenth Amendments.

Whether or not the trial judge used *hearsay* as the basis for the the contempt order.

Whether or not the petitioner was ordered not to use the tape recorder in Courtroom III by anyone.

It is noteworthy, that Judge Small was so anxious to have petitioner hauled out of the courtroom by the bailiff that he did not even afford petitioner the rights which Judge Julius Hoffman extended prior to his sentencing of defendants for contempt in U.S. v. Dellinger and U.S. v. Seale 461 F2d 389 (7 Cir. 1972). At that point after the tumultuous history of denying defendant permission to represent himself in the case, the following occured:

"The Court: Mr. Seale, you have the right to speak now. I will hear you.
Mr. Seale: For myself?
The Court: In your own behalf, yes.
Mr. Seale: How come I couldn't speak before?
The Court: This is a special occasion."

(Trial Transcript, page 5475.)

Petitioner's Conviction for Criminal Contempt and the Subsequent Stigma on Her Name and Her Profession are Not Only of the Utmost Gravity for Her but Chill As Well the Exercise of First, Sixth, and Fourteenth Amendments Rights of All Litigants and All Attorneys in All Cases.

Petitioner is suffering a restraint on her liberty and legal rights not generally shared by the public at large. Petitioner must clear her name and profession of the stigma of a criminal conviction and this permits a review despite the fact the fine was paid. In *Re Grossman supra;* See ALR, 3d 478 and 479 and citations (c); *Thompson v. City of Louisville,* 362 U.S. 199, 203-204 (1960). *Burns vs. People* 9 ALR, 3d. 490 (i); 9 Ill 2d 477 (1956).

CONCLUSIONS

For these reasons a Writ of Certiorari should issue.

Respectfully submitted,

HELEN FAYE GENERES
Petitioner
2538 Waldon Street
Redding, California 96001
Telephone (916) 243-0586

September 16, 1974.

Appendices Follow

Appendix A

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

JUL 10 1974

I have this day filed Order

HEARING DENIED

This order is final forthwith

In re: 3 Civ. *No.* 14583

Generes

vs.

Superior Court, Shasta

Respectfully,

G. E. BISHEL
Clerk

21414-877 2-74 3M OSP

Appendix B-1

In the
Court of Appeal of the State of California
In and for the
THIRD APPELLATE DISTRICT
3 Civil 14583
Shasta No. 47664

Generes,
vs.
Cibula & Cibula

By the Court:

The order of this court staying enforcement of the Shasta County Superior Court order of May 7, 1974, directing payment of fines is vacated and the petitions for writ of mandate, prohibition of certiorari are denied.

Dated: June 20, 1974

Richardson, P.J.

Filed June 20, 1974, Court of Appeals, Third District.

Appendix B-2

In the
Court of Appeal of the State of California
In and for the
THIRD APPELLATE DISTRICT
3 Civil 14583

Generes vs. Cibula & Cibula	3 Civil 14583
Generes vs. Superior Court (Shasta)	3 Civil 14584 3 Civil 14585

TEMPORARY STAY ORDER

TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SHASTA:

HELEN FAYE GENERES, petitioner herein, having filed her duly verified petitions for writs of certiorari, prohibition or mandamus which have been treated by this court as petitions for writs of habeas corpus and good cause appearing,

IT IS ORDERED that enforcement of the Shasta County Superior Court order of May 7, 1974, which directed payment of fines in the aggregate amount of $1,200.00, in action No. 47664, is hereby stayed, pending the filing by May 31, 1974 of points and authorities in opposition to these petitions and further order of this court.

WITNESS THE HONORABLE FRANK K. RICHARDSON, Presiding Justice of the Court of Appeal of the State of California in and for the Third Appellate District.

ATTEST my hand and the seal of the court this 24th Day of May, 1974.

WILFRIED J. KRAMER, Clerk
By:
Mary Louise King
Deputy Clerk

Appendix C

In the
Superior Court of the State of California
County of Shasta

Helen Faye Generes,
Plaintiff,
vs.
Cibula & Cibula, et al.,
Defendants.

Civil No. 47664

TRANSCRIPT OF MAY 6, 1974

Hearing on Motion to Correct Minutes

Judge Small: "Motion to correct minutes."

Ms. Generes: "Ready, Your Honor."

Judge Small: "Just a minute, Mrs. Generes, before you start:" "All we are talking about is whether the minutes of the Court reflect what was actually said."

Ms. Generes: "They do not reflect what was actually said."

Judge Small: interrupts Ms. Generes at this point with Judge Small voice overpowering hers.

Judge Small: "The map was not before the Court, so please take it down!"

Ms. Generes and her secretary, Carol Barnard, then obeyed the

Court's order and removed the outline that Judge Small referred to as a map from the wall.

Ms. Generes continues her argument: "I'm going to object to the Court and assign it as error of the Court for this particular reason that I was not given an opportunity to present my argument and I thought I had made myself very very clear.
Judge Small: "Your motion is denied!

Mrs. Generes: "May, let me tell you.

Judge Small: "Your motion is denied!"

Mrs. Generes: "This is not—"

Judge Small: "Your motion is denied!"

Mrs. Generes: "I haven't had a right to be heard even."

Judge Small: "I have considered the minutes and the Court has it's own recollection of what was said.

Ms. Generes: "May I refresh the Court about what I said that every law in the State of California imposes a duty and you said where is it in the code? It's there and it's in the points and authorities."

Judge Small: "Ms. Generes, I want to be sure that I understand your contentions and I want you to be sure that you stick to what is relevant."

Ms. Generes: "All right, and I say that I said and I still maintain that Cibula & Cibula as defendants which is my entire theory owe me a duty as an escrow officer. The "phony" exhibit that he presented "Exhibit G" was designed for a purpose to prevent me from collecting my commission and this is a fraud and conspiracy and this whole thing entitled escrow agreement is not the escrow agreement and it was designed for the specific purpose to prevent me from collecting my commission. The escrow agreement entails the deposit receipt and agreement of sale."

Judge Small: "Mrs. Generes you are talking at right angles to

the problem. I've asked you whether you claimed you are a party to the escrow agreement?"

Mrs. Generes: "I am a party to the deposit receipt and agreement which provides that it shall not be modified or rescinded except by written signed agreement by all the parties. Now this "phony" exhibit —"

Judge Small: interrupts and states "Mrs. Generes I have asked you a question."

Ms. Generes: "I've said I realize their argument is they don't owe me a duty. I made myself very clear on that point at the previous hearing."

Judge Small: "The question was asked three times whether you were a party to the escrow agreement."

Ms. Generes: "Are you referring to the "phony" Exhibit G?"

Judge Small: "The escrow agreement—do you know what the escrow agreement is?"

Ms. Generes: "No, I don't know what you are calling the escrow agreement. The "phony" escrow agreement Exhibit G, I am not a party to because that deprives me of my commission and this is the whole conspiracy."

Judge Small: "And that was the only thing that was entered in the minutes."

Ms. Generes: "You don't have it in there that you are referring to Exhibit G because I say the escrow agreement includes the deposit receipt and agreement of sale and it has to because the meat business and the real estate were sold and I was a party to that. He owes me a duty."

Judge Small: "The minutes are clear that the reference was only to the escrow agreement. Your motion is denied."

Ms. Generes: "Would you include the escrow agreement referred to Exhibit G?"

Judge Small: "Mr. Bailiff would you remove this woman."

Ms. Generes: "I think it is only fair that you include in there Exhibit G and if it isn't I assign it as error of the Court because I —"

Judge Small: interrupts Ms. Generes and states: "The Court finds your conduct contemptuous and I fine you the sum of $500."

Ms. Generes: "You haven't been fair. You haven't been fair."

Hearing adjourned.

Appendix D

In the Superior Court of the State of California
for the County of Shasta — Dept. III
Civil No. 47664
Minute Book 1, Page 79, Filed May 7, 1974

Helen Faye Generes,
Plaintiff,
vs.
Cibula & Cibula, et al.,
Defendants.

ORDER ADJUDGING CONTEMPT

This matter came on regularly to be heard on Monday, the 6th day of April, 1974, on plaintiff's motion to amend the court's minutes of April 22, 1974. The motion was directed toward language attributed to her therein, indicating that defendants Cibula & Cibula "as escrow agents, do not have any duty to her as a party to the escrow agreement." Plaintiff contends that she in fact made this statement only as a summary of the position of those defendants. Counsel for those defendants was not present.

During the course of proceedings, plaintiff was guilty of contempt toward the court on three separate occasions, which are set forth and described in chronological order below:

1. First Assignment and Adjudication of Contempt:

Plaintiff, appearing in *propria persona*, presented argument characterizing the conduct of those defendants as fraudulent and conspiratorial. The Court admonished her that such argument was outside the issue framed by her notice of motion, and that she must confine herself to matter affecting the accuracy or inaccuracy of the minute order. Plaintiff repeatedly refused to heed this admonition, and to interrupt her remarks when the Court addressed her. She disregarded and overrode further admonitions by the Court to the same effect. The effect of plaintiff's conduct was to inject irrelevant vituperation into the proceeding, at a time when adverse counsel had no notice that he would have any occasion to meet such remarks, and to unreasonably delay handling of the cases of other litigants who were waiting in Court. Plaintiff's conduct was disorderly, disobedient and contemptuous, interrupted the due course of the proceeding, and was the product of advertent contumacy toward the court. The foregoing constituted a contempt of this court, and the court then so declared, and ordered that plaintiff shall pay a fine of $500.00 as a penalty for said contempt.

2. Second Assignment and Adjudication of Contempt:

Following the said order, plaintiff proceeded to a tape recorder and operated a switch thereupon. Said recorder was located on a window ledge at a point remote from plaintiff's position at the counsel table, where it would not, in the ordinary course of events, be noticed or observed by the court or its clerk. Plaintiff had been specifically informed by the Presiding Judge of this Court on April 22, 1974, that she could not operate a tape recorder in the courtrooms without the permission of the court. Plantiff, in response to a direct question from the court, acknowledged that she had been recording proceedings without the permission of the court,

and stated that she was doing so in the exercise of her constitutional rights.

Plaintiff's said conduct in operating the tape recorder was disobedient and constituted a contempt of this court. The court then so declared, and ordered that plaintiff shall pay a fine therefor in the sum of $200.00.

3. Third Assignment and Adjudication of Contempt:

Following the foregoing order, plaintiff made remarks intended to be critical of the personal and professional standing of the court, in the presence of the court and its attaches and a large crowd at attorneys and litigants. Said remarks included statements to the effect that the court was an insurance lawyer, that the court represented certain named insurance companies, and that plaintiff would not obey the court's orders. Said remarks were made in a loud and contentious tone, after the court had specifically directed plaintiff to terminate further argument and remove herself from the courtroom. Plaintiff's said conduct was disorderly, disobedient, insolent and contemptuous, and interrupted the proceedings of the court. The court then so declared, and ordered that plaintiff shall pay a fine therefor in the sum of $500.00.

All of the foregoing contemptuous acts occurred in immediate presence of the court. Pursuant to the provisions of Sections 178, 1209 and 1211 of the Code of Civil Procedure, and Section 1206 of the Penal Code, it is ORDERED, ADJUDGED AND DECREED:

1. That plaintiff pay the foregoing fines, in the aggregate amount of $1,200.00;

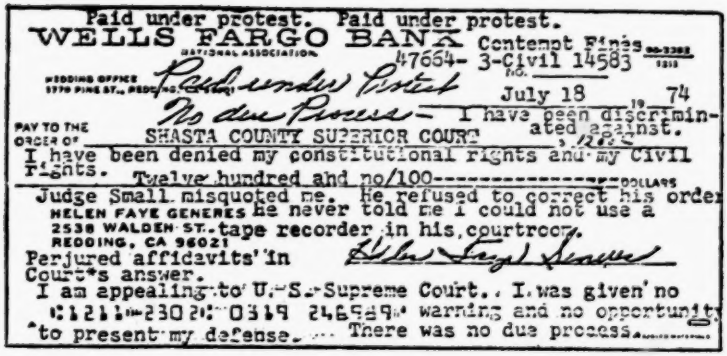
2. That, failing payment thereof in full within twenty days of the date of this order, a writ of execution issue.

DATED: May 7, 1974.

ss: Clyde Small,

CLYDE SMALL, Judge of the Superior Court.

Appendix E



Paid under protest. Paid under protest.

WELLS FARGO BANK NATIONAL ASSOCIATION

REDDING OFFICE 1770 PINE ST., REDDING, CA

Contempt Fines

47684- 3-Civil 14583

No.

Paid under Protest July 18, 19 74

No due Process — I have been discriminated against.

PAY TO THE ORDER OF SHASTA COUNTY SUPERIOR COURT

I have been denied my constitutional rights and my Civil Rights. Twelve hundred and no/100---------- DOLLARS

Judge Small misquoted me. He refused to correct his order

HELEN FAYE GENERES
2538 WALDEN ST.
REDDING, CA 96021

he never told me I could not use a tape recorder in his courtroom.

Perjured affidavits in Court's answer.

Helen Faye Generes

I am appealing to U.S. Supreme Court. I was given no warning and no opportunity to present my defense. There was no due process.

0121 230 0319 24694

I have been discriminated against. When the Court awards Judgment against Title Insurance & Trust Company in favor of me for $20,000. The Court permits them to put up bail. I was denied my right to collect the costs from Title Insurance and Trust They did not have to put up bail for the costs. The very reason I was found in contempt is to deprive me of all my commissions I have earned and to prevent me from pursuing my occupation and earning a living. I never legally withdrew my disqualification of Judge Small for bias and prejudice. His order should be null and void. Bill of rights, first, fifth, sixth eighth, and 14th amendment to Constitution violated.

Richard C. Reisner

SHASTA COUNTY CLERK
PAYABLE ONLY TO
SHASTA COUNTY TREASURER

(Published in the Redding (Calif.) Record-Searchlight Friday, July 19, 1974)

Check protests contempt-of-court fine

Redding real estate broker Helen Faye Generes typed messages of protest on the front and back of this $1,200 check, which pays off her contempt-of-court fine in Shasta County superior Court. Judge Clyde Small imposed the fine in May for three separate contempt actions he said Mrs. Generes committed. The judge found that she had spoken discourteously to him in court and had used a tape recorder in court without his permission. Despite her payment, Mrs. Generes is seeking a U.S. Supreme Court order suspending the fine while she prepares an appeal of the case to the high court. The back of Mrs. Generes' check refers to a $20,000 judgment she has won by default against Title Insurance Co. in a separate case. The company has appealed the judgment for her claimed brokerage commissions to the 3rd District Court of Appeal in Sacramento.

SUBJECT INDEX

Question Presented---------- 2

Statutes Involved---------- 3

Statement---------- 5

Argument---------- 8

Due Process Does Not Guarantee Petitioner A Right To Notice And Hearing Before Another Judge, Since After Each Act Of Contempt Occurred The Judge Acted Instantly In Holding And Punishing Petitioner For Contempt And Punishment Imposed For Each Act Of Contempt Did Not Exceed A Sentence Of Six Months- 8

Due Process Does Not Guarantee Petitioner The Right To Operate A Recording Device During A Judicial Proceeding, Since The Regulation Of Such Devices By The Court Does Not Offend Fundamental Principles Of Justice----------11

Conclusion----------13

TABLE OF AUTHORITIES CITED

Cases

Codispoti v. Pennsylvania, __U.S.)), 41 L.Ed 2d 912, 94 S. Ct.__ (1974)---------- 9,11

Ex Parte Terry, 128 U.S. 289, 32 L.Ed 405, 9 S. Ct. 77 (1888)---------- 9,11

Fisher v. Pace, 336 U.S. 156, 93 L.Ed 569 __S. Ct.__ (1949)---------- 11

In Re Hagen, 224 C.A.2d 590, 35 Cal. Rptr., 828. (1964)---- 12

Snyder v. Massachusetts, 291 U.S. 103, 78 L. Ed 674, 54 S. Ct. 330, 90 ALR 575 (1934)---------- 13

Taylor v. Hayes, __U.S.__, 41 L.Ed 2d 897, 94 S. Ct__ (1974)---------- 9

Codes

California Code of Civil Procedure Section 177-------- 4,13

California Code of Civil Procedure Section 178-------- 3

California Penal Code Section 1205---------- 3,11

their Brief in Opposition to Petition for Certiorari.

QUESTION PRESENTED

I.

When a party appearing propria persona, in the immediate presence of the Court during the course of a judicial proceeding is disorderly, disobedient and contemptuous toward the judge and interrupts the due course of the proceeding, may the judge summarily punish such party for various acts of contempt as they occur without notice of hearing?

II.

When a party appearing propria persona attempts to operate a recording device during the course of a judicial proceeding in a State Court, may the court prohibit such use of the recording device by such party?

STATUTES INVOLVED

Statutes of the State of California listed in the petition provide in their pertinent parts:

California Code of Civil Procedure, Section 178:

> "For the effectual exercise of the powers conferred by the last section, a judicial officer may punish for contempt in the cases provided in this code."

California Penal Code, Section 1205:

> "A judgment that the defendant pay a fine, with or without other punishment, may also direct that he be imprisoned until the fine is satisfied and may further direct that such imprisonment begin at and continue after the expiration of any imprisonment imposed as a part of the punishment or of any other imprisonment to which he may theretofore have been sentenced. Every such judgment (1) shall specify the extent of the imprisonment for nonpayment of the fine, which (2) shall not be more than one day for each (3) twenty dollars ($20) of the fine, nor exceed in any case the term for which the defendant might be

> sentenced to imprisonment for the offense of which he has been convicted. . . . The provisions of this section shall apply to any violation of any of the codes or statutes of the State of California punishable by a fine or by a fine and imprisonment."

Statutes of the State of California not listed in the petition but involved in this case are and provide in their pertinent parts:

California Code of Civil Procedure, Section 177:

> "Every judicial officer shall have power:
>
> 1. To preserve and enforce order in his immediate presence, and in proceedings before him, when he is engaged in the performance of official duty;
>
> 2. To compel obedience to his lawful orders as provided in this code;
>
> . . ."

California Code of Civil Procedure, Section 1209:

> "The following acts or omissions in respect to a court of justice,

or proceedings therein, are contempts of the authority of the court:

1. Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding;

2. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding;

. . .

5. Disobedience of any lawful judgment, order, or process of the court;

. . .

8. Any other unlawful interference with the process or proceedings of a court;

. . ."

STATEMENT

On May 6, 1974, petitioner was summarily punished on three separate occasions for direct contempt of Court during a Law and Motion proceeding.

After each occurance the Judge acted instantly, holding petitioner in contempt and immediately imposing the punishment therefor.

The first assignment and adjudication of contempt was imposed after petitioner made persistent attempts to argue points not in issue after the court ordered her not to do so; petitioner refused to comply with the order; petitioner's conduct was disorderly, disobedient and contemptuous, and interrupted the due course of the proceeding; and petitioner's conduct was the product of advertent contumacy toward the court.

The second assignment and adjudication of contempt was imposed after petitioner operated a recording device during the proceeding before the court in disobedience to an order of the court

not to operate such a device.

The third assignment and adjudication of contempt was imposted after petitioner in a loud and contentious tone of voice made statements in the courtroom impugning and showing disrespect to the judge in the presence of a large crowd of attorneys and litigants after the court ordered petitioner to terminate further arguments and to remove herself from the courtroom; such remarks included a derogatory statement that the court was an insurance lawyer, that the court represented certain named insurance companies; petitioner's conduct was disorderly, disobedient, insolent and contemptuous, and interrupted the proceedings of the court.

Petitioner was fined $500.00 on the first assignment and adjudication; $200.00

on the second assignment and adjudication and $500.00 on the third assignment and adjudication (A.D. of the Petition).

No transcript of the judicial proceeding exists; no party to the action requested the presence of a court reporter. The Court of Appeal of the State of California, Third Appellate District, after issuing a Temporary Stay Order, vacated said Order and denied petitioner's Writs of Mandate, Prohibition and Certiorari without opinion (A.B-1, B-2 of the Petition); the Supreme Court for the State of California denied petitioner a hearing without opinion (A.A. of the Petition).

ARGUMENT

Due Process Does Not Guarantee Petitioner A Right To Notice And Hearing Before Another Judge, Since After Each Act

Of Contempt Occurred The Judge Acted Instantly In Holding And Punishing Petitioner For Contempt And Punishment Imposed For Each Act Of Contempt Did Not Exceed A Sentence Of Six Months.

The inherent power of the court to immediately punish summarily for contempt committed in its presence during a judicial proceeding when instant action is necessary to preserve order and maintain the court authority is an anciently recognized and recently reaffirmed power.

Codispoti v. Pennsylvania, __U.S.__, 41 L.Ed 2d 912, 94 S. Ct __ (1974);

Taylor v. Hayes, __U.S.__, 41 L.Ed 2d 897, 94 S. Ct. __ (1974);

Ex Parte Terry, 128 U.S. 289, 32 L. Ed 405, 9 S. Ct 77 (1888).

This inherent power of immediate summary punishment was properly invoked by the court in this action. The justification of necessity is supported by

the facts. The petitioner was disorderly, contemptuous and insolent towards the judge. She persisted to argue points not relevant to her motion after the judge ordered her to stop. She surreptitiously operated a recording device in the courtroom in definace of an order from the presiding judge not to do so without prior permission from the judge; petitioner's voice was loud and contentious as she impugned the integrity of the judge and defied his authority making an orderly and speedy dispatch of the case and proceeding impossible. Necessity dictated instant action for the preservation of order and maintenance of the court's authority.

The Court of Appeal reviewed the conduct of petitioner and the power of the court to summarily punish for contempt; the facts recited in the order

constituting the contempt are presumed to be true.

Ex Parte Terry, 128 U.S. 289, 32 L.Ed 405, 9 S. Ct 77 (1888);

See, Fisher v. Pace, 336 U.S. 156, 93 L.Ed 569 __S. Ct__ (1949).

The contempt constitutes a petty contempt; trial by jury is not required.

Codispoti v. Pennsylvania, __U.S.__, 41 L. Ed 2d 912, 94 S. Ct__ (1974).

Assuming arguendo, the provisions of Penal Code Section 1205 would be an appropriate indication of a maximum sentence set by punishment by fine without the alternative of imprisonment; the maximum sentence would not exceed 60 days (one day for each $20.00 of the fine).

Due Process Does Not Guarantee Petitioner The Right To Operate A Recording Device During A Judicial Proceeding, Since The Regulation Of Such Devices

By The Court Does Not Offend Fundamental Principles Of Justice.

Petitioner attacks the order adjucicating contempt on the grounds that she operated the device in the exercise of her constitutional rights. Petitioner cites, In Re Hagen, 224 C.A.2d 590, 35 Cal. Rptr. 828 (1964) in support of her contentions.

Hagen does not support petitioner's position. It merely holds that a party cannot be held in contempt for operating a recording device in the absence of a rule or order prohibiting such use. The case did not involve either a specific rule or an order purporting to control recording devices, and in this regard, it is distinguishable from the facts in this case.

Respondent can find no cases relative to the power of the court to

regulate or prohibit the use by parties or their counsel of recording devices; however, since the risk of abuse, interruption and interference with judicial proceedings is great as shown by the quality of the alleged transcript attached to the petition, it only follows that such regulation falls within the inherent power of the court to exercise a reasonable control over all proceedings connected with the litigation before it, so that there may be the orderly administration of justice.

Snyder v. Massachusetts, 291 U.S. 103, 78 L.Ed 674, 54 S. Ct 330, 90 ALR 575 (1934)

California Code of Civil Procedure, Section 177.

CONCLUSION

A Federal Question not herebefore determined by this Court has not been determined by the State Court, and the

determinations of the State Court are in accord with applicable decisions of this Court. The Petition for Certiorari should be denied.

Respectfully submitted,

ROBERT A. REHBERG
County Counsel
County of Shasta
Courthouse, Room 209
Redding, California 96001
Telephone (916) 246-5711
Attorney for Respondents

October 11, 1974.

CERTIFICATE OF MAILING

I certify or declare under penalty of perjury as provided by C.C.P. 2015.5 that on October 11, 1974, I served the Brief in Opposition to Petition for Certiorari on the persons listed below by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in a United States Post Office mail box at Redding, California, addressed as follows:

Helen Faye Generes
2538 Waldon Street
Redding, California 96001

Boornazian, Deichler & Sullivan
Attorneys at Law
1330 Broadway, Suite 1630
Oakland, California

Lopez, Kennedy & Srite
Attorneys at Law
P. O. Box 1820
Redding, California 96001

Dated: October 11, 1974.

ROBERT A. REHBERG

SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
OCT 21 1974

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1974

No. 74-282

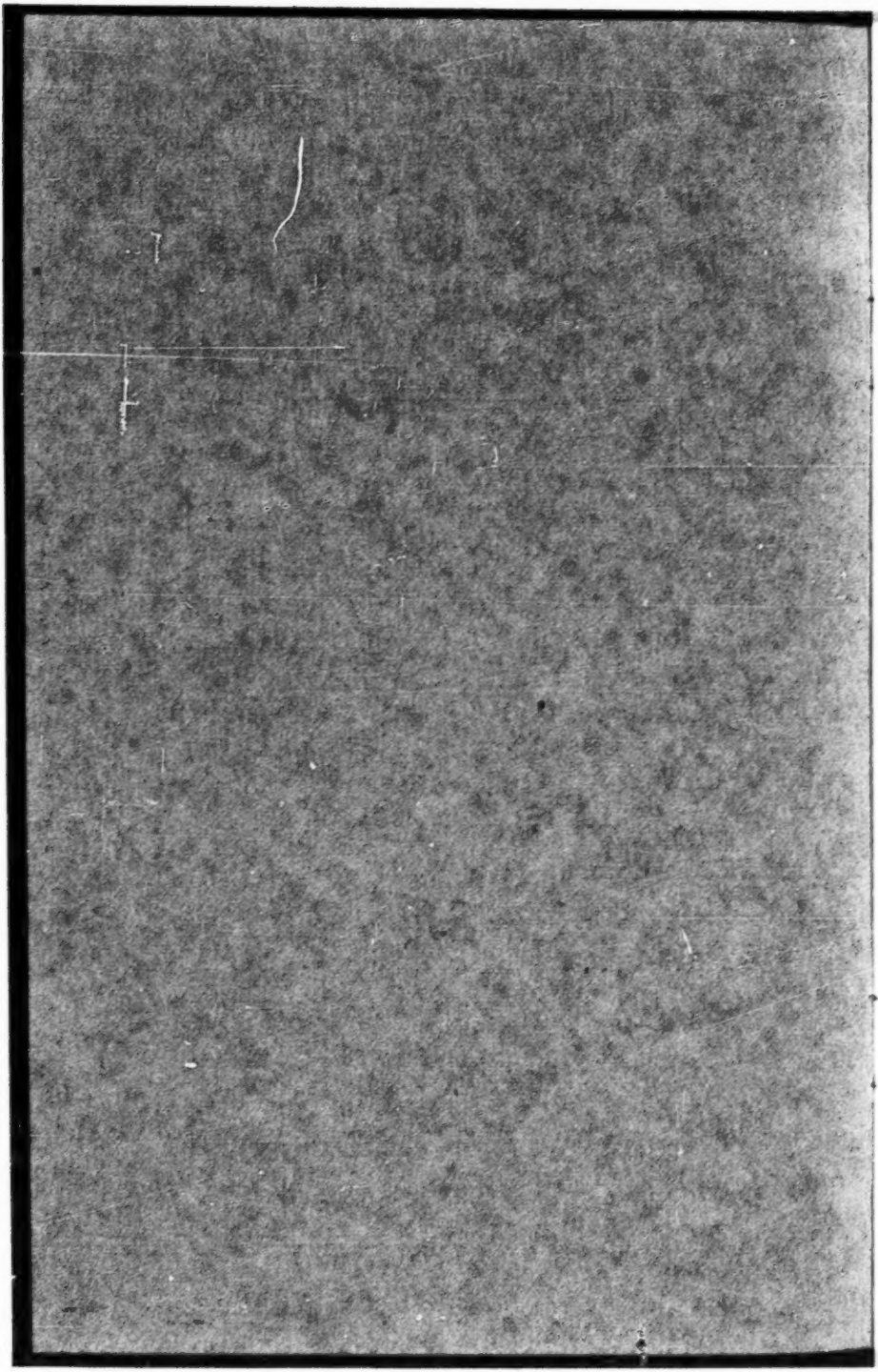
HELEN FAYE GENERES, *Petitioner*

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SHASTA
CIBULA & CIBULA, et al., *Respondent*
and
THE PEOPLE OF THE STATE OF CALIFORNIA,
Real Party in Interest

PETITIONER'S REPLY BRIEF
to the California Court of Appeal
Third Appellate District

HELEN FAYE GENERES
2538 Waldon Street
Redding, California 96001
Telephone (916) 243-0586
Petitioner.



In the Supreme Court

OF THE

United States

OCTOBER TERM, 1974

No. 74-282

HELEN FAYE GENERES, *Petitioner*

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SHASTA
CIBULA & CIBULA, et al., *Respondent*

and

THE PEOPLE OF THE STATE OF CALIFORNIA,
Real Party in Interest

PETITIONER'S REPLY BRIEF
to the California Court of Appeal
Third Appellate District

PETITIONER'S REPLY BRIEF

The answer to respondent's question number one is found in *Re Halliman* (1969) 71 C2d 1179, 81 Cal Rptr. 1, 459 P 2d 255 "Facts set forth in an order adjudging contempt did not support the trial court's finding of contemptuous behavior under Code of Civil Procedure 1209 where finding was in effect, that co[illegible] statement to the trial judge . . . were made in an antagonistic, insulting and disrespectful tone of voice, where record failed to show that the Court warned counsel as to his tone of voice with respect to either of the two instances of conduct found contemptuous . . ." (4) "An attorney is entitled to advocate respectfully and in good faith his contentions . . ."

The answer to question number two is found in *United States of America v. Dan Jack Combs* (1968) 390 F2d 426, 3 ALR Fed 410 the court said, "charge of criminal contempt arising out of the use, without permission, of tape recorder in court proceeding should have been heard by another judge . . ." and at 420 "that if contempt charges involved disrespect to or criticism of judge, he is disqualified from presiding at trial or hearing except with defendant's consent."

"What may not be taken away under Fourteenth Amendment are notice of charges and opportunity to be heard in defense." *Snyder v. Massachusetts*, (1934) (6) 291 U.S. 103, 78 L. Ed. 674. "Where a person's good name, reputation, honor or integrity is at stake . . . notice and opportunity to be heard are essential." Const. / mend. 14, *Haines v. Askew*, (1973) 368 F. Supp. 369.

The Petition for Writ of Certiorari should be granted and the contempt charges annulled.

Respectfully submitted,
HELEN FAYE GENERES
2538 Waldon Street
Redding, California 96001
Petitioner

Oct. 18, 1974